



CITY OF HAYWARD

AGENDA REPORT

AGENDA DATE 11/15/05

AGENDA ITEM 5

WORK SESSION ITEM _____

TO: Mayor and City Council

FROM: Director of Community and Economic Development

SUBJECT: Introduction of Density Bonus Ordinance

RECOMMENDATION:

It is recommended that the City Council adopt the attached resolution approving the Negative Declaration and introduce the attached ordinance.

DISCUSSION:

State law requires local governments to adopt procedures by which developers may request increases to the allowable density of their residential development and/or other concessions, if they meet specific conditions. There are three main elements required in the proposed City ordinance:

1. Density bonus – An increase in the number of residential units beyond what is allowed by the zoning for a particular site;
2. Incentives and concessions – Relief from development standards including parking requirements; and
3. Alternatives to the creation of specified units – Other means, aside from creating affordable or senior units, by which a developer may be granted a density bonus, concessions and incentives.

Density Bonus for Specified Units

The ordinance must provide for a density bonus when a developer constructs a residential development with units meeting specific requirements.

A developer of a residential development of five or more units may request a density bonus if the developer agrees that a percentage of the units will be made affordable to Very Low, Low or Moderate Income Households. The smallest bonus is a 5% increase in density for providing 10% of a development's units for Moderate Income households. The exact amount of the density bonus will vary according to the percentage of housing units made affordable by the developer at a given income category. At all income levels, the maximum bonus is 35%. Attachment A presents the range of density increases available to the developer if affordable units exceed the

various threshold requirements. All density calculations resulting in fractional units are rounded up to the next whole number. The developer must specify the income category of units which will warrant the density bonus. Attachment B shows maximum annual incomes, adjusted for family size, for various income levels.

State law requires that units made affordable to very low and low-income households maintain their affordability for at least 30 years. However, only the initial occupants of affordable ownership units in a common interest development must be moderate income households. Rather than apply resale restrictions to these units, the City is authorized to recapture the initial amount required to make the unit affordable and a proportionate share of the appreciation upon subsequent sale, in accordance with the formula set forth in the State Density Bonus law.

A developer of housing reserved exclusively for senior citizen households may request a 20% density bonus if the developer agrees to construct either a conventional development of 35 or more units, or a mobile home park of any size.

Incentives and Concessions

State law requires that the ordinance include incentives and concessions to developers creating affordable units that will result in identifiable, financially sufficient and actual cost reductions. The City has little flexibility in determining the nature of these concessions and incentives. According to State law, "concession or incentive" includes:

- A reduction in site development standards;
- Modification of zoning code requirements; and
- Modification of architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission.

State law further defines the following reductions in site development standards as concessions or incentives:

- A reduction in setback and square footage requirements;
- A reduction in the ratio of parking spaces that would otherwise be required; and
- Approval of mixed use zoning.

By agreeing to create the minimum percentage of affordable units as described above, a developer may request one incentive or concession. By increasing the percentage of affordable units, a development will qualify for additional incentives. A developer may request both a density increase and incentives or concessions for the corresponding percentage of affordable units at a specific income level. Attachment A also shows the progression of incentives or concessions that apply as the percentage of affordable units increase.

Developments entitled to the regulatory relief described above, are also allowed to employ the following parking ratio:

- Zero to one bedroom – one onsite parking space;
- Two to three bedrooms – two onsite parking spaces;
- Four or more bedrooms – two and one-half parking spaces.

Additionally, State law allows for developers to meet the onsite parking requirements through tandem parking or uncovered parking.

Alternatives to the creation of Specified Units

The revised State law requires the City to provide a density bonus along with concessions and incentives if a developer agrees to the following action even though they do not directly create affordable housing units:

State law now permits a developer to donate a certain amount of land to the City in lieu of constructing affordable housing. By donating the land, the developer is entitled to a 15% increase over the maximum allowable density. The parcel must be at least one acre in size or of sufficient size to permit the development of at least 40 units. It must also have the appropriate zoning to make the development of the units feasible.

If a developer includes a child care facility within or adjacent to the residential development which includes affordable units, the City must grant either an additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility, or an additional concession or incentive designated by the City to contribute significantly to the economic feasibility of the construction of the child care facility. However, the child care facility must remain in operation for a term equal to the affordability term of the units, and the household income of the children attending the facility must reflect the percentage of affordable units at each income level within the development. As State law does not specify how these conditions will be enforced, the City's ordinance holds the developer responsible for both the construction and operation of the child care facility, and this will be a condition of approving the housing development.

Proposed Density Bonus Ordinance

The proposed ordinance closely follows the State law and will allow the City to impose specific procedures, collect fees and standardize monitoring and enforcement of the affordable units produced in accordance with the ordinance. Staff will return with a separate action to establish fees to cover the administrative costs for evaluating requests for concessions or incentives, and waivers or modifications of development standards including density increases.

The City has very little discretion in the terms of this proposed Ordinance but will retain its ability to conduct design and environmental review for developments incorporating density bonuses and incentives or concessions. The grounds for rejecting a requested incentive or

concession are narrow; the City must make a written finding, based upon substantial evidence, of one of the following:

- Incentive or concession is not required to provide for affordable housing costs; or
- Incentive or concession would have a specific adverse impact upon public health and safety, or the physical environment, or historic properties, and there is no way to mitigate or avoid the specific adverse impact without rendering the development unaffordable to low and moderate income households.

The proposed ordinance would primarily apply to developments of 5 to 19 units. A review of Planning records since 2000 indicates that there have been about 20 residential development projects which fall within this range. The City's Inclusionary Housing Ordinance (IHO) requires residential developments of 20 or more units to provide fifteen percent of units to be affordable for 45 years and developments of 20 or more dwelling units will be governed by the IHO. The proposed ordinance specifies that the IHO will prevail if there is any conflict between the two ordinances, such as the term of the affordability restrictions.

CITY COUNCIL WORKSESSION

On October 4, 2005, the City Council considered the draft ordinance during its Work Session and expressed concerns regarding State inroads into "home rule." Clarification was requested regarding the annual income represented by various income categories, whether the developer would be required to provide operating funds for a Child Care Facility, and the standards under which the City might not grant a requested incentive or concession. These points have been addressed above.

PLANNING COMMISSION

The Planning Commission held a public hearing on the proposed ordinance at its November 3, 2005 meeting. Following a brief discussion regarding State mandates, the Commissioners recommended approval (4:1) of the Negative Declaration and proposed ordinance, supporting this ordinance to encourage private developers to include affordable units in their market-rate developments.

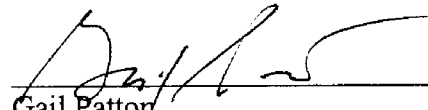
PUBLIC NOTICE

Notices of the Public Hearing and associated Negative Declaration on the proposed Density Bonus Ordinance were published in the Daily Review on October 19, and November 5, 2005. No comments have been received to date in response to these notices.

ENVIRONMENTAL REVIEW

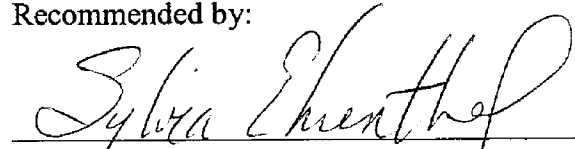
The proposed ordinance is defined as a "project" under the parameters set forth in the California Environmental Quality Act (CEQA) Guidelines. However, no significant environmental impacts are identified in staff's Environmental Checklist and, therefore, a Negative Declaration has been prepared (Attachment C).

Prepared by:



Gail Patton
Neighborhood and Economic Development Manager

Recommended by:



Sylvia Ehrental
Director of Community and Economic Development

Approved by:



Jesús Armas, City Manager

Attachment A: Range of Density Bonus and Incentives/Concession Available
Attachment B: Income Limits Chart
Attachment C: Negative Declaration and Environmental Checklist
Attachment D: Draft Planning Commission Minutes of November 3, 2005
Resolution
Ordinance

**Range of Density Bonus and Incentives/Concessions Available
Based on Percentage of Affordable Units
Provided at Various Income Levels**

Affordable Housing Set-Aside	Resulting Density Bonus and Incentives/Concessions					
	Very Low		Low		Moderate	
	Density Increase	No. of Incentives	Density Increase	No. of Incentives	Density Increase	No. of Incentives
5%	20.0%	1				
6%	22.5%	1				
7%	25.0%	1				
8%	27.5%	1				
9%	30.0%	1				
10%	32.5%	2	20.0%	1	5.0%	1
11%	35.0%	2	21.5%	1	6.0%	1
12%	35.0%	2	23.0%	1	7.0%	1
13%	35.0%	2	24.5%	1	8.0%	1
14%	35.0%	2	26.0%	1	9.0%	1
15%	35.0%	3	27.5%	1	10.0%	1
16%			29.0%	1	11.0%	1
17%			30.5%	1	12.0%	1
18%			32.0%	1	13.0%	1
19%			33.5%	1	14.0%	1
20%			35.0%	2	15.0%	2
21%			35.0%	2	16.0%	2
22%			35.0%	2	17.0%	2
23%			35.0%	2	18.0%	2
24%			35.0%	2	19.0%	2
25%			35.0%	2	20.0%	2
26%			35.0%	2	21.0%	2
27%			35.0%	2	22.0%	2
28%			35.0%	2	23.0%	2
29%			35.0%	2	24.0%	2
30%			35.0%	3	25.0%	2
31%					26.0%	2
32%					27.0%	2
33%					28.0%	2
34%					29.0%	2
35%					30.0%	3
36%					31.0%	3
37%					32.0%	3
38%					33.0%	3
39%					34.0%	3
40%					35.0%	3

CITY OF HAYWARD
Maximum Income and Gross Rent Levels
FY 2005

	<i>Household Size</i>									
	1	2	3	4	5	6	7	8	9	10
30% Median Rent	17,400 435	19,850 496	22,350 559	24,850 621	26,850 671	28,800 720	30,800 770	32,800 820	34,500 863	36,500 913
35% Median Rent	20,100 503	23,000 575	25,900 648	28,800 720	31,100 778	33,400 835	35,700 893	38,000 950	40,300 1,008	42,600 1,065
50% Median Rent	28,800 720	32,900 823	37,000 925	41,100 1,028	44,400 1,110	47,700 1,193	51,000 1,275	54,300 1,358	57,500 1,438	60,800 1,520
HUD/HCD Very Low Rent	29,000 725	33,100 828	37,250 931	41,400 1,035	44,700 1,118	48,000 1,200	51,350 1,284	54,650 1,366	57,500 1,438	60,800 1,520
60% Median Rent	34,500 863	39,500 988	44,400 1,110	49,300 1,233	53,300 1,333	57,200 1,430	61,200 1,530	65,100 1,628	69,000 1,725	73,000 1,825
70% Median Rent	40,300 1,008	46,000 1,150	51,800 1,295	57,500 1,438	62,100 1,553	66,700 1,668	71,300 1,783	76,000 1,900	80,600 2,015	85,200 2,130
80% Median Rent	46,000 1,150	52,600 1,315	59,200 1,480	65,800 1,645	71,000 1,775	76,300 1,908	81,500 2,038	86,800 2,170	92,100 2,303	97,300 2,433
HUD Low/HCD Lower Rent	46,350 1,159	53,000 1,325	59,600 1,490	66,250 1,656	71,550 1,789	76,850 1,921	82,150 2,054	87,450 2,186	92,800 2,320	98,100 2,453
95% Median Rent	54,700 1,368	62,500 1,563	70,300 1,758	78,100 1,953	84,300 2,108	90,600 2,265	96,800 2,420	103,100 2,578	109,300 2,733	115,600 2,890
HUD/HCD Median										
100% Median 35% of Monthly Income	57,500 1,677	65,800 1,919	74,000 2,158	82,200 2,398	88,800 2,590	95,400 2,783	101,900 2,972	108,500 3,165	115,100 3,357	121,700 3,550
110% Median 35% of Monthly Income	63,300 1,846	72,300 2,109	81,400 2,374	90,400 2,637	97,700 2,850	104,900 3,060	112,100 3,270	119,400 3,483	126,600 3,693	133,800 3,903
115% Median Rent	66,200 1,655	75,600 1,890	85,100 2,128	94,500 2,363	102,100 2,553	109,700 2,743	117,200 2,930	124,800 3,120	132,300 3,308	139,900 3,498
HCD Moderate										
120% Median Rent	69,000 1,725	78,900 1,973	88,800 2,220	98,600 2,465	106,500 2,663	114,400 2,860	122,300 3,058	130,200 3,255	138,100 3,453	146,000 3,650
HUD Median Income (Oakland PMSA): \$82,200										
NOTE: Income limits rounded to nearest \$50 Gross rents at 30% of household income										



DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

NEGATIVE DECLARATION

Notice is hereby given that the City of Hayward finds that no significant effect on the environment as prescribed by the California Environmental Quality Act of 1970, as amended will occur for the following proposed project:

I. PROJECT DESCRIPTION:

Density Bonus Ordinance. A proposed ordinance amending Chapter 10 (Planning, Zoning and Subdivisions) of the Hayward Municipal Code by adding a new Article 19 pertaining to Density Bonuses consistent with the State Density Bonus Law (Government Code Section 65915), which allows for increased residential densities for projects that guarantee that a portion of housing units will be affordable to households of low income, moderate income, senior citizens, or where a qualifying land donation or a child care facility is also proposed in conjunction with qualified housing projects. The scope of this project is limited to the adoption of the ordinance only.

II. FINDING PROJECT WILL NOT SIGNIFICANTLY AFFECT ENVIRONMENT:

The proposed project will have no significant effect on the area's resources, cumulative or otherwise.

III. FINDINGS SUPPORTING DECLARATION:

1. The proposed ordinance has been reviewed according to the standards and requirements of the California Environmental Quality Act (CEQA) and an Initial Study Environmental Checklist Form has been completed for the proposed ordinance. The Initial Study has determined that the proposed ordinance could not result in significant effects on the environment.
2. The proposed Ordinance establishes an incentive for private developers to create housing affordable to households of very-low, low and moderate income in order to meet the need for affordable housing for residents of Hayward.
3. The proposed Ordinance is consistent with the goals and policies of the City of Hayward General Plan Housing Element in that it encourages the provision of an adequate supply of housing units in a variety of housing types that accommodate the diverse housing needs of those who live or wish to live in the City of Hayward.
4. The ordinance encourages the integration of affordable and market-rate units. This type of development activity is consistent with the City of Hayward General Plan Housing Element policy to ensure that the City's housing stock contains an adequate number of decent and affordable for-sale and rental units for households of all income levels.

5. The ordinance encourages the development of affordable for-sale housing. This development activity is consistent with the City of Hayward General Plan Housing Element policy of encouraging ownership housing and assisting tenants to become homeowners in order to attain a 70% owner-occupancy rate.

IV. PERSON WHO PREPARED INITIAL STUDY:

Gail Patton, Neighborhood and Economic Development Manager

Dated: October 18, 2005

V. COPY OF INITIAL STUDY IS ATTACHED

For additional information, please contact the City of Hayward Department of Community & economic Development, 777 B Street, Hayward, CA 94541-5007 or telephone (510) 583-4228.

DISTRIBUTION/POSTING

- Provide copies to project applicants and all organizations and individuals requesting it in writing.
 - Reference in all public hearing notices to be distributed 20 days in advance of initial public hearing and/or published once in Daily Review 20 days prior to hearing.
- Project file.
- Post immediately upon receipt at the City Clerk's Office, the Main City Hall bulletin board, and in all City library branches, and do not remove until the date after the public hearing.



**Environmental Checklist Form
Initial Study**

1. Project title: **Density Bonus Ordinance**
2. Lead agency name and address: **City of Hayward, 777 B Street, Hayward, CA 94541**
3. Contact person and phone number: **Gail Patton, Neighborhood & Economic Development Manager - (510)583-4228 – gail.patton@hayward-ca.gov**
4. Project location: **City of Hayward**
5. Project sponsor's name and address: **City of Hayward, 777 B Street, Hayward, CA 94541**
6. General plan designation:
All General Plan designations where residential development is allowed.
7. Zoning: **All zoning designations where residential development is allowed.**
8. Description of project:
Density Bonus Ordinance. A proposed ordinance amending Chapter 10 (Planning, Zoning and Subdivisions) of the Hayward Municipal Code by adding a new Article 19 pertaining to Density Bonuses consistent with the State Density Bonus Law (Government Code Section 65915), which allows for increased residential densities for projects that guarantee that a portion of housing units will be affordable to households of low income, moderate income, senior citizens, or where a qualifying land donation or a child care facility is also proposed in conjunction with qualified housing projects. The scope of this project is limited to the adoption of the ordinance only.
9. Surrounding land uses and setting: **City-wide**
10. Other public agencies whose approval is required: **None**

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

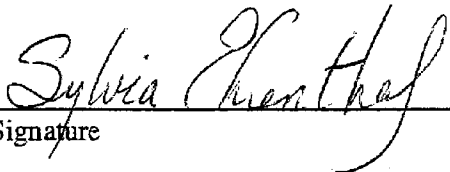
The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

- | | | |
|--|---|---|
| <input type="checkbox"/> Aesthetics | <input type="checkbox"/> Agriculture Resources | <input type="checkbox"/> Air Quality |
| <input type="checkbox"/> Biological Resources | <input type="checkbox"/> Cultural Resources | <input type="checkbox"/> Geology /Soils |
| <input type="checkbox"/> Hazards & Hazardous Materials | <input type="checkbox"/> Hydrology / Water Quality | <input type="checkbox"/> Land Use / Planning |
| <input type="checkbox"/> Mineral Resources | <input type="checkbox"/> Noise | <input type="checkbox"/> Population / Housing |
| <input type="checkbox"/> Public Services | <input type="checkbox"/> Recreation | <input type="checkbox"/> Transportation/Traffic |
| <input type="checkbox"/> Utilities / Service Systems | <input type="checkbox"/> Mandatory Findings of Significance | |

DETERMINATION: (To be completed by the Lead Agency)

On the basis of this initial evaluation:

- ☒ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
- ☐ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
- ☐ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
- ☐ I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.
- ☐ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.


Signature

October 18, 2005
Date

for Gail Patton
Printed Name

City of Hayward
Agency

ENVIRONMENTAL ISSUES:

Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporation	Less Than Significant Impact	No Impact
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I. AESTHETICS -- Would the project:

- | | | | | |
|--|--------------------------|--------------------------|-------------------------------------|-------------------------------------|
| a) Have a substantial adverse effect on a scenic vista? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c) Substantially degrade the existing visual character or quality of the site and its surroundings? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

COMMENT: The ordinance regulates density bonuses for qualified projects. As a result, the land use density of a qualified project may increase and/or development standards, including setbacks and height restrictions may be modified, where the surrounding land uses or existing community were not developed under the same standards. However, the ordinance will not, in and of itself, create an impact to visual resources. Subsequent projects will be subject to environmental review as appropriate to determine if they pose any potential impacts to the environment.

II. AGRICULTURE RESOURCES: In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. Would the project:

- | | | | | |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Conflict with existing zoning for agricultural use, or a Williamson Act contract? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporation	Less Than Significant Impact	No Impact
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III. AIR QUALITY -- Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:

- | | | | | |
|---|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a) Conflict with or obstruct implementation of the applicable air quality plan? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| d) Expose sensitive receptors to substantial pollutant concentrations? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| e) Create objectionable odors affecting a substantial number of people? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Comment: Subsequent projects will be subject to environmental review as appropriate to determine if they pose any potential impacts to the environment.

IV. BIOLOGICAL RESOURCES -- Would the project:

- | | | | | |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporation	Less Than Significant Impact	No Impact
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Comment: Subsequent projects will be subject to environmental review as appropriate to determine if they pose any potential impacts to the environment.

V. CULTURAL RESOURCES -- Would the project:

a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Disturb any human remains, including those interred outside of formal cemeteries?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

COMMENT: *The ordinance regulates density bonuses for qualified projects. As a result, the land use density of a qualified project may increase and/or development standards, including setbacks and height restrictions may be modified, where the surrounding land uses or existing community were not developed under the same standards. However, the ordinance will not, in and of itself, create an impact to visual resources. Subsequent projects will be subject to environmental review as appropriate to determine if they pose any potential impacts to the environment.*

VI. GEOLOGY AND SOILS -- Would the project:

a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
ii) Strong seismic ground shaking?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
iii) Seismic-related ground failure, including liquefaction?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
iv) Landslides?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporation	Less Than Significant Impact	No Impact
b) Result in substantial soil erosion or the loss of topsoil?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

COMMENT: *The entire City lies within a general region of known fault zones and seismic activity. However, the ordinance will not, in and of itself, subject residents to seismic hazards. Subsequent projects will be subject to environmental review as appropriate to determine if they pose any significant hazards.*

VII. HAZARDS AND HAZARDOUS MATERIALS - Would the project:

a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporation	Less Than Significant Impact	No Impact
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

COMMENT: *Parts of the City are adjacent to wildlands. However, the ordinance will not, in and of itself, subject residents to wildland fire hazards. Subsequent projects will be subject to environmental review as appropriate to determine if they pose any significant hazards.*

VIII. HYDROLOGY AND WATER QUALITY -- Would the project:

a) Violate any water quality standards or waste discharge requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Otherwise substantially degrade water quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporation	Less Than Significant Impact	No Impact
j) Inundation by seiche, tsunami, or mudflow?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

COMMENT: Parts of the City contain flood hazard areas. However, the ordinance will not, in and of itself, subject residents to flood hazards. Subsequent projects will be subject to environmental review as appropriate to determine if they pose any significant hazards.

IX. LAND USE AND PLANNING - Would the project:

a) Physically divide an established community?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

COMMENT: The proposed ordinance regulates density bonuses for qualified projects. The density bonus, if granted, may result in additional units exceeding what is permitted under the City's General Plan. However, the City could typically expect that density bonus projects would be spread throughout the City rather than concentrated in one area, and that the relative change in patterns, scale, or character, would be minimal in relation to the City as a whole. Although the density bonus provides an opportunity to increase the number of units typically permitted by the General Plan land use designation, the increase is mandated by State law to provide an incentive for developers to provide a greater number of housing units to households whose incomes otherwise limit housing opportunities. The benefits of affordable housing are expected to outweigh the increase in density permitted.

X. MINERAL RESOURCES -- Would the project:

a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporation	Less Than Significant Impact	No Impact
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XI. NOISE - Would the project result in:

- | | | | | |
|---|--------------------------|--------------------------|-------------------------------------|-------------------------------------|
| a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

COMMENT: *New residential developments facilitated by the adoption of the proposed ordinance are not expected to generate any noise levels that exceed acceptable standards. However, it is possible that the residents of the homes could be exposed to excessive noise levels if the homes are built near existing noise sources such as highways, railroads, the airport, or industrial operations. Although the ordinance will not result in the direct increase in ambient noise levels, projects facilitated by the ordinance may increase ambient noise levels due to higher density development, such as traffic, human voices, landscape maintenance equipment, and similar noise generators.*

XII. POPULATION AND HOUSING -- Would the project:

- | | | | | |
|---|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporation	Less Than Significant Impact	No Impact
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XIII. PUBLIC SERVICES

a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:

Fire protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Police protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Schools?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Parks?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Other public facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

COMMENT: The development of new housing projects could create impacts due to increased population and demand on schools, parks, libraries and similar public facilities. However, the ordinance will not, in and of itself, create demands on services or facilities. Development pursuant to the ordinance will be required to pay school impact fees and park dedication in-lieu fees to mitigate the impact of additional households on the schools and parks. Subsequent projects will be subject to environmental review as appropriate to determine if they pose any significant impacts.

XIV. RECREATION --

a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

COMMENT: The development of new housing projects could create impacts due to increased population and demand on neighborhood and regional parks. However, the ordinance will not, in and of itself, create demands on services or facilities. Subsequent projects will be subject to environmental review as appropriate to determine if they pose any significant impacts.

Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporation	Less Than Significant Impact	No Impact
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XV. TRANSPORTATION/TRAFFIC -- Would the project:

- | | | | | |
|--|--------------------------|--------------------------|-------------------------------------|-------------------------------------|
| a) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| e) Result in inadequate emergency access? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| f) Result in inadequate parking capacity? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| g) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

COMMENT: *The development of new housing projects, as may be facilitated by adoption of the proposed ordinance, could add incrementally to the overall increase in local traffic. Housing projects with higher residential densities and a greater number of units could potentially have an adverse effect on specific local road systems. Such impacts can only be addressed on a project-level review. Similarly, reduced off-street parking standards could result in parking shortages if parking needs are not adequately assessed and provided for in the project design. Subsequent projects will be subject to environmental review as appropriate to determine if they pose any significant impacts.*

XVI. UTILITIES AND SERVICE SYSTEMS - Would the project:

- | | | | | |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

	<i>Potentially Significant Impact</i>	<i>Potentially Significant Unless Mitigation Incorporation</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Comply with federal, state, and local statutes and regulations related to solid waste?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

XVII. MANDATORY FINDINGS OF SIGNIFICANCE --

a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

CONCLUSION:

The proposed ordinance is in conformance with the purposes, intent, and provisions of the City's General Plan. The ordinance will encourage the development of housing, which is in keeping with the need for housing for all income levels, as stated in the General Plan. Specifically, the proposed ordinance supports the following Housing Policies and Strategies of the Housing Element of the General Plan:

- **Expand The Housing Supply**
Encourage the provision of an adequate supply of housing units in a variety of housing types which accommodate the diverse housing needs of those who live or wish to live in the City.
- **Preserve Owner-Occupied Housing**
Encourage the development of ownership housing and assist tenants to become homeowners in order to reach a 70% owner-occupancy rate, within the parameters of Federal and State housing law.

- **Develop Affordable Housing**

Ensure that the City's housing stock contains an adequate number of decent and affordable units for households of all income levels.

Due to the nature of the project – the adoption of a proposed Density Bonus Ordinance, where the specific sites of future development activities are not yet known - there is a lack of site-specific knowledge with which to conduct a site-specific environmental review. Therefore, this environmental review is conducted at a “plan” level of analysis, rather than the more detailed site-specific level. No actual site-specific development is proposed by the Ordinance. Therefore, an analysis which includes more detailed, site-specific information about any potential development impacts is not feasible at this time and would occur when the City prepares a future environmental document in connection with site-specific project activities. A more detailed project-level analysis pursuant to the CEQA will continue to be required for any project activity that has the potential to impact the physical environment. The proposed project will have no significant effect on the area's resources, cumulative or otherwise.



**MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, November 3, 2005, 7:30 p.m.
777 B Street, Hayward, CA 94541**

MEETING

The regular meeting of the Hayward Planning Commission was called to order at 7:30 p.m. by Acting Chair McKillop followed by the Pledge of Allegiance.

ROLL CALL

Present: COMMISSIONERS: Lavelle, Bogue, Peixoto, Zermefio
 ACTING CHAIR: McKillop
 Absent: COMMISSIONER: Sacks
 CHAIRPERSON: Thnay

Staff Members Present: Conneely, Patenaude, Patton, Lens

General Public Present: One.

PUBLIC COMMENTS

There were no public comments.

PUBLIC HEARINGS

1. Density Bonus Ordinance

Staff report submitted by Neighborhood and Economic Development Manager Patton, dated November 3, 2005, was filed.

Neighborhood and Economic Development Manager Patton presented the report.

In response to Commissioner Peixoto's inquiry, Neighborhood and Economic Development Manager Patton indicated that each city and county in California are required to adopt conforming ordinances. In reference to the difference between the inclusionary and density ordinances, Ms. Patton stated that the Inclusionary Ordinance is the means by which the City is seeking to ensure that developers will be cognizant to the need for affordable housing and will do their share to meet that need. She added that in contrast, the proposed ordinance is an incentive that requires nothing of developers but allows the procedure by which the developers can request, if willing to provide affordable housing, ways to maximize their land and infrastructure cost.

Regarding Commissioner Peixoto's inquiry about affordable housing for the low income and ways to prevent increases in home value as experienced lately with the real estate, Ms. Patton responded that the Density Bonus Ordinance does not set a number of years that a moderate income ownership unit has to remain affordable but does allow the City to recapture a proportionate share of

appreciation, and the Inclusionary Ordinance requires a term of forty-five years and is secured by means of deed restriction.

In response to Commissioner Lavelle's question as to whether the ordinances are going to be promoted by the City, Ms. Patton indicated that it is difficult to determine how often developers are going to request the density increase or incentives. Acting Planning Manager Patenaude indicated that Olson Company requested a density increase and that staff had to rely on knowledge of the state law. He added that the ordinance sets up a better procedure whereas before the City did not have a procedure in place.

In response to Commissioner Zermeño's inquiry if a four-unit project could claim partial concession, Ms. Patton indicated that there is a five-unit threshold and doubted that the City would be agreeable to make partial concession. Acting Planning Manager Patenaude added that at this point there is no policy to recommend partial concession.

Having no one to speak, Acting Chair McKillop opened and closed the public hearing at 7:53 p.m.

Commissioner Lavelle moved the item commending staff for the effort put into studying this matter. She was content with the knowledge and experience acquired regarding the Inclusionary Ordinance and Tandem Parking Ordinance. She added support for the portion of the law that will be implemented that affordable rate units will not be distinguishable in any particular way, but blended in the project.

Commissioner Bogue stated that he is split about the mandated law because the City is required to implement the law, but it is voluntary for a developer to use it. He mentioned that this law was designed to encourage communities to provide a range of housing value, but Hayward already offers a wide variety of affordable housing priced differently. He added that he had concerns about supporting the law at this time.

In response to Acting Chair McKillop's inquiry for the City's concession for going below the state minimum requirements, Assistant City Attorney Conneely mentioned that the piece of legislation is expressly applicable to charter cities and it sets the minimum standards. She added that the City can always grant more development concession, but cannot grant less. Ms. McKillop mentioned support indicating that it is important to continue to provide more housing for people with different economic status.

Commissioner Zermeño supported the motion indicating that there are safeguards against having a project with the low-income homeowners clustered in one corner. He was pleased that different people will be integrated and was content with the City standards. Additionally, he concurred with other Commissioners of the need of more homes.

Acting Planning Manager Patenaude clarified that the Olson application received was regarding the Inclusionary Ordinance.

Commissioner Peixoto supported the motion with some reservation for bureaucratic decisions that are intended to address housing issues for every city. He was suspicious with the state's ability to



**MINUTES OF THE REGULAR MEETING OF THE
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monitor cities. Furthermore, he indicated that the City is providing its fair share of low and very low income housing, and decided to support the motion because it is state mandated.

Commissioner Lavelle moved, seconded by Commissioner Zermeno, and approved to recommend to the City Council to adopt the Negative Declaration subject to the findings and introduce the proposed Density Bonus Ordinance.

AYES: COMMISSIONERS Lavelle, Peixoto, Zermeno
ACTING CHAIR McKillop
NOES: COMMISSIONER Bogue
ABSENT: COMMISSIONER Sacks
CHAIR Thnay

ADDITIONAL MATTERS

2. Oral Reports on Planning and Zoning Matters
Acting Planning Manager Patenaude announced a work session on November 10 regarding Stonebrae Design Guidelines and a regular meeting on November 17 regarding items related to Cannery projects. Additionally, he announced a meeting scheduled for December 15.

3. Commissioners' Announcements, Referrals
Commissioner Lavelle reminded citizens to exercise their rights and vote on November 8.

Commissioner Zermeno expressed appreciation for the left turn access on Foothill Boulevard and for the beginning of the Cinema Place construction.

APPROVAL OF MINUTES

The minutes of October 20, 2005 were approved.

ADJOURNMENT

Acting Chair McKillop adjourned the meeting at 8:06 p.m.

APPROVED:

Marvin Peixoto, Secretary
Planning Commission

ATTEST:

Miriam Lens
Commission Secretary

DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. 05-

Introduced by Council Member _____

WTC
11/8/05

RESOLUTION ADOPTING THE NEGATIVE DECLARATION AND APPROVING THE DENSITY BONUS ORDINANCE

WHEREAS, the City Council considered the matter and recommended approval of the Density Bonus Ordinance and its action thereon is on file in the office of the City Clerk and is hereby referred to for further particulars; and

WHEREAS, a negative declaration has been prepared and processed in accordance with City and CEQA guidelines; and

WHEREAS, the City Council of the City of Hayward hereby finds and determines that the Density Bonus Ordinance has been reviewed according to the standards and requirements of the California Environmental Quality Act (CEQA) and an Initial Study Environmental Checklist Form has been completed for the proposed project. The Initial Study has determined that the proposed Ordinance could not result in significant effects on the environment.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby approves the Negative Declaration and adopts the companion Density Bonus Ordinance.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2005

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

MAYOR:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

DRAFT

ORDINANCE NO. _____

ORDINANCE ADDING ARTICLE 19 TO CHAPTER 10 OF THE HAYWARD MUNICIPAL CODE RELATING TO DENSITY BONUSES

mrl
11/8/05

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. FINDINGS AND PURPOSE.

The City Council finds and determines that lack of access to affordable housing has a direct impact upon the health, safety and welfare of the residents of the City of Hayward. According to the 2000 U.S. Census, about forty percent (40%) of Hayward tenant households (8,669 households) pay more than thirty percent (30%) of their income for rent. Only twenty-two percent (22%) of the population of Alameda County can afford to buy a home here, significantly below the national average of fifty-seven percent (57%). According to the 2000 U.S. Census, approximately thirty-two percent (32%) of tenant households pay more than thirty-five percent (35%) of household income for rent. Forty percent (40%) of tenants pay more than thirty percent (30%) of household income for rent. Because all forms of housing are expensive to build, rent and buy, a variety of housing programs and resources are required to help meet the need for affordable housing. The City is limited in its ability to maintain a thriving mixed-income community without additional affordable housing. Rising land prices have been a key factor in preventing development of new affordable housing. New housing construction in the City that does not include affordable units aggravates the existing shortage of affordable housing by absorbing the supply of available residential land. This reduces the supply of land for affordable housing and increases the price of remaining residential land. Providing the affordable units required by this Ordinance will help to ensure that part of the City's remaining developable land is used to provide affordable housing.

The California Legislature requires each local government to adopt an ordinance that specifies how the jurisdiction will comply with Section 65915 et seq. of the California Government Code. This Ordinance is intended to satisfy the requirements of Government Code Section 65915 et seq. by specifying the methods and procedures by which developers of certain Residential Development Projects may request density bonuses and other incentives in relationship to the construction of said Residential Development Projects, or in relationship to the donation of land intended for the construction of Residential Development Projects, in which Affordable Housing Units will be reserved for and made available to Very Low income, Lower income, Moderate income, Senior Citizen households and age-restricted Mobilehome Parks.

Section 2. The City of Hayward's Municipal Code is hereby amended to add Article 19 to Chapter 10 as follows:

**"ARTICLE 19
DENSITY BONUS ORDINANCE**

"SEC. 10-19.100 TITLE.

This Article shall be known and may be cited as the Density Bonus Ordinance of the City of Hayward.

SEC. 10-19.110 DEFINITIONS.

Certain words and phrases are defined within this Article. Where it appears from the context of such words, phrases, or provisions that a different meaning is intended, the definition shall be as determined by the Director of Community and Economic Development/Planning Director.

- a. 'Affordable Housing Cost,' 'Affordable Ownership Housing Cost' and 'Affordable Rental Housing Cost' are defined as the allowable percentage of gross household income a household spends on housing costs for a given income group, as defined below:
 - 1. For Very Low Income households, the Affordable Housing Cost shall not exceed the product of thirty percent (30%) times fifty percent (50%) of the Area Median Income adjusted for family size appropriate for the unit;
 - 2. For Lower Income households, the Affordable Housing Cost shall not exceed the product of thirty percent (30%) times seventy percent (70%) of the Area Median Income adjusted for family size appropriate for the unit;
 - 3. For Moderate Income households, the Affordable Housing Cost shall not be less than twenty-eight percent (28%) of the gross income of the household, nor exceed the product of thirty-five percent (35%) times one hundred ten percent (110%) of the Area Median Income adjusted for family size appropriate for the unit;
 - 4. For owner-occupied units, the Affordable Housing Cost includes the monthly mortgage principal and interest, property taxes, homeowner's insurance, and homeowner/condominium association fees (where applicable); and,

5. For renter-occupied units, the Affordable Housing Cost includes the monthly rent plus utility allowance, as defined by the Alameda County Housing Authority.
- b. 'Affordable Housing Unit' is defined as a Dwelling Unit within a Residential Development Project which will be made available to and reserved for Very Low Income households, Lower Income households or Moderate Income households at an Affordable Housing Cost for the respective group(s).
- c. 'Applicant' is defined as any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities who seek residential property development permits or approvals from the City of Hayward.
- d. 'Area Median Income (AMI)' is defined as the median income for the Oakland Primary Metropolitan Statistical Area (PMSA) as defined annually by the U.S. Department of Housing and Urban Development (HUD) and adopted by the California Department of Housing and Community Development (HCD). Income groupings that are subdivisions of AMI, such as Very Low, Low, Lower and Moderate-Income households, are also defined and published by HUD and adopted by HCD.
- e. 'Child Care Facility' is defined as a facility installed, operated, and maintained for the nonresidential care of children as defined under applicable state licensing requirements for the facility.
- f. 'Child Care Facility Density Bonus' means a floor area ratio bonus over the otherwise maximum allowable density permitted under the applicable zoning ordinance and land use elements of the general plan of the City of Hayward of the following amounts: A maximum of five (5) square feet of floor area for each one square foot of floor area contained in the Child Care Facility for existing structures; or a maximum of ten (10) square feet of floor area for each one square foot of floor area contained in the Child Care Facility for new structures.
- g. 'Condominium Conversion Density Bonus' means an increase in units of twenty-five percent (25%) over the number of apartments, to be provided within the existing structure or structures proposed for conversion.
- h. 'Density Bonus' is defined as a density increase of at least five percent (5%), unless a lesser percentage is elected by the Applicant, and no more than thirty-five percent (35%) over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the Applicant to the City of Hayward.

- i. 'Development Standard' is defined as site or construction conditions that apply to a Residential Development Project pursuant to any ordinance, general plan element, specific plan, charter amendment, or other local condition, law, policy, resolution, or regulation.
- j. 'Dwelling Unit' is defined as a dwelling designed and intended for residential occupancy by one household.
- k. 'Floor Area' is defined as to a commercial or industrial project, as the floor area as calculated under the applicable zoning ordinance of the City of Hayward and as to a Child Care Facility, as the total area contained within the exterior walls of the facility and all outdoor areas devoted to the use of the facility in accordance with applicable state child care licensing requirements.
- l. 'Household Income' is defined as the gross annual household income for all adult wage earners, Senior Citizen or disabled family members and any other sources of household income.
- m. 'Lower Income Households' is defined as households with a total combined income not exceeding eighty percent (80%) of the Area Median Income, adjusted for household size, as established by the U.S. Department of Housing and Urban Development.
- n. 'Marketing Plan' is defined as a plan that describes how the Applicant will inform the public, and those within the appropriate income groups, of the availability of Affordable Housing Units.
- o. 'Maximum Allowable Residential Density' is defined as the density allowed under the zoning ordinance, or if a range of density is permitted, means the maximum allowable density for the specific zoning range applicable to the project.
- p. 'Mixed-Use Development Project' is defined as a Residential Development Project that may include a mix of commercial, office, industrial or residential uses.
- q. 'Mobilehome Park' is defined as a mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.
- r. 'Moderate Income Households' is defined as households with a total combined income not exceeding one hundred and twenty percent (120%) of the Area Median Income, adjusted for household size, as established by the U.S. Department of Housing and Urban Development.

- s. 'Presumed Occupancy Levels' are defined as: One person for a studio unit; two people for a one bedroom unit; three people for a two bedroom unit; and one additional person for each additional bedroom thereafter.
- t. 'Resale Controls and/or Rent Restrictions' are defined as the restrictions, set forth by the City of Hayward or by state and/or federal law, by which the rents paid on rental Affordable Housing Units and the sales price for ownership Affordable Housing Units are limited to ensure that the unit remains affordable to Very Low or Low Income households for a term of no less than thirty (30) years. With respect to rental units, such rent restrictions shall generally be in the form of a regulatory agreement recorded against the applicable property. With respect to owner occupied units, such resale controls shall generally be in the form of resale restrictions, deeds of trust and/or other similar documents recorded against the applicable property.
- u. 'Residential Development Project' is defined as detached single-family dwellings, multiple dwelling structures, groups of dwellings, condominium or townhouse developments, condominium conversions, cooperative developments, and mixed use developments that include housing units. This definition also includes contiguous or non-contiguous parcels that have one or more applications filed within a twenty-four (24) month period and which are under the same ownership.
- v. 'Senior Citizen Household' is defined as a household headed by a person sixty-two (62) years of age or older.
- x. 'Senior Citizen Housing Development' is defined as a development of at least thirty-five (35) dwelling units reserved for Senior Citizen Households and as further described in Sections 51.3 and 51.12 of the Civil Code.
- y. 'Very Low Income Households' is defined as households with a total combined income not exceeding fifty percent (50%) of the Area Median Income, adjusted for household size, as established by the U.S. Department of Housing and Urban Development.

SEC. 10-19.120 APPLICATION.

The provisions of this Article apply to Residential Development Projects and mixed-use Residential Development Projects, consisting of either five (5) or more general Dwelling Units, Senior Citizen Housing Developments or Mobilehome Parks. For those projects that are subject to the provisions of Hayward Municipal Code Chapter 10, Article 17, Inclusionary Housing Ordinance, Affordable Housing Units provided under the Inclusionary Housing Ordinance may be counted toward the requirements of this Article. To the extent that the provisions of this Article and the Inclusionary Housing Ordinance are in conflict, the provisions of the Inclusionary Housing Ordinance prevail.

SEC. 10-19.130 SPECIFIED HOUSING UNITS

The City shall grant a Density Bonus, and incentives or concessions described in Section 10-19.200, when an Applicant for a Residential Development Project seeks and agrees to construct at least any one of the following:

- a. Ten percent (10%) of the total Dwelling Units of a Residential Development Project for Lower Income Households; or
- b. Five percent (5%) of the total Dwelling Units of a Residential Development Project for Very Low Income Households; or
- c. A Residential Development Project meeting the requirements of a Senior Citizen Housing Development or a Mobilehome Park; or
- d. Ten percent of the total Dwelling Units in a common interest development as defined in Section 1351 of the Civil Code, for persons and families of Moderate Income, provided that all units in the development are offered to the public for purchase.

The Applicant shall elect whether the Density Bonus shall be awarded on the basis of Section 10-19.130 (a), (b), (c) or (d). All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a Density Bonus shall not be interpreted, in and of itself, to require a general plan amendment, zoning change, or other discretionary approval. The Density Bonus shall not be included when determining the number of Dwelling Units that is equal to five (5%) or ten (10%) percent of the total Dwelling Units.

For Residential Development Projects that meet the criteria of Section 10-19.130(a), the Density Bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
16	29
17	30.5
18	32
19	33.5
20	35

For Residential Development Projects that meet the criteria of Section 10-19.130(b), the Density Bonus shall be calculated as follows:

Percentage Very Low Income Units

Percentage Density Bonus

5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

For Residential Development Projects that meet the criteria of Section 10-19.130 (c), the Density Bonus shall be twenty (20%) percent.

For Residential Development Projects that meet the criteria of Section 10-19.130(d), the Density Bonus shall be calculated as follows:

Percentage Moderate Income Units

Percentage Density Bonus

10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30

36	31
37	32
38	33
39	34
40	35

Residential Development Projects incorporating a Density Bonus require review and approval by the Planning Commission; provided, however, that if the Residential Development Project involves another permit or entitlement requiring City Council approval, then the Planning Commission may recommend approval or deny the project. Decisions of the Planning Commission may be appealed to the City Council as provided in Section 10-1.2845 of the City's Zoning Ordinance.

SEC. 10-19.140 LAND DONATION.

When an Applicant donates land to the City, the Applicant shall be entitled to a fifteen percent (15%) increase above the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan for the entire Residential Development Project as follows:

Percentage Very Low Income	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28
24	29
25	30
26	31
27	32
28	33
29	34
30	35

This Density Bonus shall be in addition to any Density Bonus mandated by Section 10-19.130, up to a maximum combined increase of thirty-five (35%) percent if the Applicant seeks both the increase required under this section and the increase under Section 10-19.130. All Density Bonuses resulting in fractional numbers shall be rounded up to the next whole number.

An Applicant shall be eligible for the increased Density Bonus described in this section if all of the following conditions are met:

- a. The Applicant donates and transfers the land to the City no later than the date of approval by the City of the final subdivision map, parcel map, or residential development application of the Residential Development Project seeking the Density Bonus.
- b. The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to Very Low Income households in an amount not less than ten percent (10%) of the number of residential units of the proposed Residential Development Project seeking the Density Bonus.
- c. The transferred land is characterized by the following:
 1. It is at least one acre in size or of sufficient size to permit development of at least forty (40) units; and
 2. It has the appropriate general plan designation and is appropriately zoned for affordable housing; and
 3. It is or will be served by adequate public facilities and infrastructure; and
 4. It shall have appropriate zoning and development standards to make the development of the Affordable Housing Units feasible; and
 5. No later than the date of approval of the final subdivision map, parcel map, or of the Residential Development Project seeking the Density Bonus, the transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the Very Low Income housing units on the transferred land, except that the City may subject the proposed Residential Development Project to subsequent design review, if the design is not reviewed by the City prior to the time of transfer.
- d. The transferred land and the Affordable Housing Units shall be subject to a deed restriction, which shall be recorded on the property at the time of dedication, ensuring continued affordability of the units for a term of at least thirty (30) years.
- e. The land is transferred to the City or to another housing developer approved by the City.

- f. The transferred land shall be within the boundary of the proposed Residential Development Project or, if the City agrees, within one-quarter mile of the boundary of the proposed Residential Development Project.

SEC. 10-19.150 CHILD CARE FACILITIES.

When an Applicant proposes to construct a Residential Development Project that conforms to the requirements of Section 10-19.130 and includes a Child Care Facility that will be located on the premises of, as part of, or adjacent to, the Residential Development Project, the City shall grant either of the following: (i) An additional Density Bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the Child Care Facility; or (ii) an additional concession or incentive designated by the City to contribute significantly to the economic feasibility of the construction of the Child Care Facility.

The City shall require, as a condition of approving the Residential Development Project that the following occur: (i) The Child Care Facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the Affordable Housing Units are required to remain affordable pursuant to this Article; and (ii) of the children who attend the Child Care Facility, the children of Very Low Income Households, Lower Income Households, Moderate Income Households shall equal a percentage that is equal to or greater than the percentage of Dwelling Units that are made affordable to Very Low Income Households, Lower Income Households, or families of Moderate Income Households pursuant to Section 10-19.130.

Notwithstanding any requirement of this Article, the City shall not be required to provide a Density Bonus or concession for a Child Care Facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

SEC. 10-19.160 CONDOMINIUM CONVERSIONS.

When an Applicant's Residential Development Project is the conversion of an existing apartment complex to a condominium complex and the Applicant agrees to make at least thirty-three percent (33%) of the total units of the proposed condominium Residential Development Project affordable to moderate-income households for thirty years (30), or fifteen percent (15%) of the total units of the proposed condominium Residential Development Project to Lower Income households for thirty years (30), and agrees to pay for the administrative costs incurred by the City related to process the application and monitor the future status of the Affordable Housing Units, the City shall either (i) grant a Condominium Conversion Density Bonus or (ii) provide other incentives of equivalent financial value to be determined by the City.

An Applicant shall be ineligible for a Condominium Conversion Density Bonus or other incentives under this Section if the apartments proposed for conversion constitute a Residential Development Project for which a Density Bonus or other incentives were previously provided under this Article or the City's Inclusionary Housing Ordinance.

SEC. 10-19.170 DESIGN, DISTRIBUTION AND TIMING OF AFFORDABLE HOUSING UNITS

Affordable Housing Units must be constructed concurrently with market-rate units. The Affordable Housing Units shall be integrated into the Residential Development Project and be comparable in infrastructure (including sewer, water and other utilities), construction quality and exterior design to the market-rate units. The Affordable Housing Units must also comply with the following criteria:

- a. **Rental Residential Development Projects:** When Affordable Housing Units are required in rental Residential Development Projects, the units should be integrated with the project as a whole. All Affordable Housing Units shall reflect the range and numbers of bedrooms provided in the project as a whole, and shall not be distinguished by design, construction, or materials. All Affordable Housing Units shall be reasonably dispersed throughout the project.
- b. **Owner-occupied Residential Development Projects:** When Affordable Housing Units are required in owner-occupied Residential Development Projects, the units should be integrated with the project as a whole. Affordable Housing Units may be smaller in aggregate size and have different interior finishes and features than market-rate units so long as the interior features are durable, of good quality and consistent with contemporary standards for new housing. All Affordable Housing Units shall reflect the range and numbers of bedrooms provided in the project as a whole, except that if the market-rate units provide more than four bedrooms, the Affordable Housing Units need not provide more than four bedrooms.

No building permits will be issued for market-rate units until permits for all Affordable Housing Units have been obtained, unless Affordable Housing Units are to be constructed in phases pursuant to a plan approved by the City.

Market-rate units will not be inspected for occupancy until all Affordable Housing Units have been constructed, unless Affordable Housing Units are to be constructed in phases pursuant to a plan approved by the City.

SEC. 10-19.180 REQUESTS FOR INCENTIVES OR CONCESSIONS.

Applicant must submit a Density Bonus Application, as described in Section 10-19.220 below, for the specific incentives or concessions that the Applicant requests. The City shall grant the concession or incentive requested by the Applicant unless the City makes a written finding, based upon substantial evidence, of either of the following:

- a. The concession or incentive is not required in order to provide for Affordable Housing Costs;
- b. The concession or incentive would have a specific adverse impact upon public health and safety or the physical environment or on any real property that is listed in the

Federal Register of Historic Resources, the California Register of Historical Resources or the City 's List of Officially Designated Architecturally and Historically Significant Buildings and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to Low and Moderate Income households.

SEC. 10-19.190 GRANTING OF INCENTIVES OR CONCESSIONS.

If the conditions of 10-19.130 are met by Applicant, the following incentives or concessions may be granted:

- a. One incentive or concession for a Residential Development Project that makes: At least ten percent (10%) of the total units affordable to Lower Income households; or at least five percent (5%) of the total units affordable to Very Low income households; or at least ten percent (10%) of the total units affordable to persons and families of Moderate Income in a common interest development.
- b. Two incentives or concessions for a Residential Development Project that makes: At least twenty percent (20%) of the total units affordable to Lower Income households; or at least ten percent (10%) of the total units affordable to Very Low income households; or at least twenty percent (20%) of the total units affordable to persons and families of Moderate Income in a common interest development.
- c. Three incentives or concessions for a Residential Development Project that makes: At least thirty percent (30%) of the total units for Lower Income households; at least fifteen percent (15%) for Very Low Income households, or at least thirty percent (30%) for persons and families of Moderate Income in a common interest development.

SEC. 10-19.200 TYPES OF INCENTIVES OR CONCESSIONS.

For the purposes of this Article, concession or incentive may mean:

- a. A reduction in site Development Standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission, resulting in identifiable, financially sufficient, and actual cost reductions, or
- b. A reduction in setback and square footage requirements; or
- c. A reduction in the ratio of vehicular parking spaces and/or configurations as set forth in Government Code Section 65915(p); or
- d. Approval of mixed use zoning in conjunction with the Residential Development Project if commercial, office, industrial, or other land uses will reduce the development cost of the Residential Development Project and if the commercial, office, industrial, or other land uses are

compatible with the Residential Development Project and the existing or planned development in the area where the proposed housing project will be located.

Nothing in this Section shall be construed to require the provision of direct financial incentives for the Residential Housing Development, including the provision of publicly owned land by the City or the waiver of fees or dedication requirements.

SEC. 10-19.210 COMPLIANCE.

The provisions of this Article shall apply to all agents, successors and assignees of an Applicant, developer, builder or property owner proposing a Residential Development Project governed by this Article. No tentative map, use permit, special development permit or occupancy permit shall be issued for any Residential Development Project unless exempt from or in compliance with the terms of this Article.

The City may institute any appropriate legal actions or proceedings necessary to ensure compliance herewith, including but not limited to actions to revoke, deny or suspend any permit or development approval.

SEC. 10-19.220 DENSITY BONUS APPLICATION

In order to receive the concessions and/or incentives described in Section 10-19.200, the Applicant must submit to the City a Density Bonus Application (DBA) which will be treated as part of the development application. At any time during the review process, the Planning Director may require from the Applicant additional information reasonably necessary to clarify and supplement the application or determining the consistency of the proposed DBA with the requirements of this Article.

The DBA should include, but not be limited to, the following:

- a. A description of the Residential Development Project including the proposed total number of Affordable Housing Units, Senior Housing Units or Mobilehome Park Units;
- b. The zoning and general plan designations and assessors parcel number(s) of the project site;
- c. A vicinity map and preliminary site plan, drawn to scale, including building footprints, driveway and parking layout.
- d. A description of the concessions or incentives requested.
- e. If an additional incentive(s) is requested, the application should describe why the additional incentive(s) is necessary to provide the Affordable Housing Units.

SEC. 10-19.230 AFFORDABLE HOUSING UNIT PLAN

The Applicant must submit an Affordable Housing Unit Plan (AHUP) which will be treated as part of the development application. At any time during the review process, the Planning Director may require from the Applicant additional information reasonably necessary to clarify and supplement the application or determining the consistency of the proposed AHUP with the requirements of this Article.

The AHUP should include, but not be limited to, the following:

- a. The location, structure (attached, semi-attached, or detached), proposed tenure (for-sale or rental), and size of the proposed market-rate, commercial space and/or Affordable Housing Units;
- b. A floor or site plan depicting the location of the Affordable Housing Units and a floor plan describing the size, in square footage, of the Affordable Housing Units;
- c. The income levels to which each Affordable Housing Unit will be made affordable;
- d. The documents that will be used to assure that the units remain affordable for the desired term, such as resale and rental restrictions, deeds of trust, and rights of first refusal and other documents;
- e. For phased Residential Development Projects, a phasing plan that provides for the timely development of the number of Affordable Housing Units proportionate to each proposed phase of development as required by this Article;
- f. A marketing plan that describes how the Applicant will inform the public, and those within the appropriate income groups, of the availability of Affordable Housing Units; and
- g. Any other information reasonably requested by the Planning Director to assist with evaluation of the AHUP under the standards of this Article.

SEC. 10-19.240 AFFORDABLE HOUSING UNIT AGREEMENT.

The form of the Affordable Housing Unit Agreement (AUA) will vary, depending on the manner in which the provisions of this Article are satisfied for a particular development. The AUA shall be recorded as a restriction on the parcel or parcels on which the Affordable Housing units will be constructed. The approval and recordation of the AUA shall take place prior to final map approval, or, where a map is not being processed, prior to issuance of building permits for such parcels or units. The AUA shall be binding on all future owners and successors in interest. An AUA must include, at minimum, the following:

- a. A description of the development, including the total number of units, the number of Affordable Housing Units, and the tenure of the Affordable Housing Units;
- b. The size, in square footage, and location of Affordable Housing Units;
- c. A description of the household income group to be accommodated by the Affordable Housing Units, and the formula for determining the affordable rent or affordable sales price and housing cost for each Affordable Housing Unit;
- d. The term of affordability for the Affordable Housing Units;
- e. A schedule for completion and occupancy of the Affordable Housing Units;
- f. Provisions and/or documents for resale restrictions, deeds of trust, rights of first refusal or rental restrictions;
- g. The Marketing Plan for sale or rental of the Affordable Housing Units;
- h. Provisions for monitoring the ongoing affordability of the Affordable Housing Units, and the process for qualifying prospective resident households for income eligibility; and
- i. A description of the concession(s) or incentive(s) provided by the City.

SEC. 10-19.250 AFFORDABLE HOUSING UNIT AGREEMENTS FOR OWNERSHIP UNITS

In the case Residential Development Projects consisting of ownership units, the AUA must provide the following additional conditions governing the sale and use of Affordable Housing Units during the applicable use restriction period:

- a. Affordable Housing Units shall be sold to Very Low Income households, Lower Income households or Moderate Income households in a common interest development, at an affordable sales price and housing cost as defined by this Article.
- b. Affordable Housing Units shall be owner-occupied by Very Low or Lower Income households or by Moderate Income households within common interest developments.
- c. The purchaser of each Affordable Housing Unit shall execute an instrument or agreement approved by the City restricting the sale of the Affordable Housing Unit in accordance with this Article during the applicable use restriction period. Such instrument or agreement shall be recorded against the parcel containing the Affordable Housing unit and shall contain such provisions as the City may require to ensure continued compliance with this Article and with Government Code Section

65915. With respect to Moderate Income Affordable Housing Units, the instrument or agreement shall provide for equity-sharing as set forth in Government Code Section 65915.

- d. Any additional obligations relevant to the compliance with this Article.

SEC. 10-19.260 AFFORDABLE HOUSING UNIT AGREEMENTS FOR RENTAL UNITS

In the case of Residential Development Projects consisting of rental units, the AUA must provide the following additional conditions governing the use of Affordable Housing units during the use restriction period:

- a. Specific property management procedures for qualifying and documenting tenant income eligibility, establishing affordable rent and maintaining Affordable Housing units for qualified tenants;
- b. Provisions requiring property owners to verify household incomes and maintain books and records to demonstrate compliance with this Article.
- c. Provisions requiring the Property Owner to submit an annual report to the city, which includes the name(s), address, and income of each household occupying target units, and which identifies the bedroom size and monthly rent or cost of each Affordable Housing unit.
- d. Provisions describing the amount of, and timing for payment of, Administrative Fees to be paid to the City for the on-going compliance monitoring of the provisions of this Article.
- e. Any additional obligations relevant to the compliance with this Article.

SEC. 10-19.270 ADMINISTRATIVE FEE

An administrative fee shall be charged to the Applicant for City review of all materials submitted in accordance with this Article and for on-going enforcement of the provisions of this Article. The fee amount shall be established by City Council resolution and will be described in the City of Hayward Master Fee schedule. Fees will be charged for staff time and materials associated with the following activities: Development review process; project marketing and lease-up; long-term compliance of the Affordable Housing Units.

SEC. 10-19.280 VIOLATION OF AFFORDABLE HOUSING COST REQUIREMENTS

In the event it is determined that rents in excess of those allowed by operation of this Article have been charged to a tenant residing in a rental Affordable Housing Unit, the City may take the

appropriate legal action to recover, and the rental unit owner shall be obligated to pay to the tenant (or to the City in the event the tenant cannot be located), any excess rent charges.

In the event it is determined that a sales price in excess of that allowed by operation of this Article has been charged to an income-eligible household purchasing an ownership Affordable Residential Unit, the City may take the appropriate legal action to recover, and the Affordable Residential Unit seller shall be obligated to pay to the purchaser (or to the City in the event the purchaser cannot be located), any excess sales costs."

Section 3. If any section, subsection, paragraph or sentence of this Ordinance, or any part thereof, is for any reason found to be unconstitutional, invalid or beyond the authority of the City of Hayward by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance.

Section 4. This Ordinance shall become effective thirty (30) days after adoption by the City Council.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the____
__ day of_____, 2005, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward held the_
_____ day of _____, 2005, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward